

JUDGE FURMAN

15 02281

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JASON J. COOKE

Civil Action No.

Plaintiff,

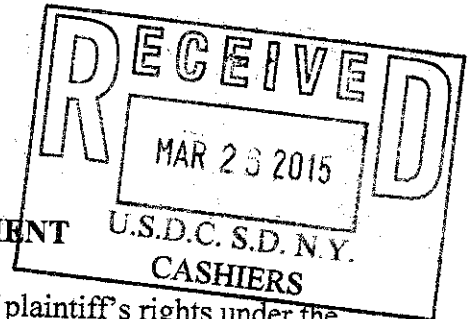
-against-

COMPLAINT

THE CITY OF NEW YORK,
POLICE OFFICER SERGIO DELAMOTA,
POLICE OFFICER DAVID HOFER, and
SERGEANT STANLEY LOPEZ

Defendants.

JURY TRIAL
DEMANDED



INTRODUCTION STATEMENT

1. This is a civil action seeking to redress violations of plaintiff's rights under the Constitution and laws of the United States and the State of New York for defendants' conduct in falsely arresting him, fabricating evidence against him, maliciously persecuting him, for failure to intercede to prevent an unlawful arrest, and for failure to adequately train, supervise, control and discipline police officers.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C.A. sections 1983 and 1988 and the Equal Protection clause to the United States Constitution. Plaintiff also invokes this Court's supplemental jurisdiction to assert claims under Article I, Section 12 of the New York State Constitution, Section 8 of the New York Civil Rights Law and the State law claims of malicious persecution and false imprisonment.
3. This Court has jurisdiction pursuant to 28 U.S.C.A. Sections 1331 and 1343, since this claim arises under the Constitution and laws of the United States and since defendants acted under color of state law.

VENUE

4. Venue lies in this District pursuant to 28 U.S.C.A. Section 1391(b) (2) since the events giving rise to the claim occurred in the Southern District of New York.

PARTIES

5. Plaintiff is a resident of Brooklyn, New York. At the time of the event alleged, he resided in the city of Brooklyn in Kings County in the state of New York.
6. The defendant, The City of New York is a municipality in the State of New York, and employs the defendants Police Officer Sergio Delamota (hereinafter "Officer Delamota"), Police Officer David Hofer (hereinafter "Officer Hofer"), and Sergeant Stanley Lopez (hereinafter "Sergeant Lopez"), and the actions and / or conduct of the officers complained of herein were done as part of the custom, practice, usage, regulation and / or direction of the City of New York.
7. Defendants Officer Delamota, Officer Hofer, and Sergeant Lopez are New York Police Officers who are being sued in their individual and official capacities.

FACTUAL ALLEGATIONS

8. On March 9, 2013, at about 4:00 a.m., the Plaintiff had just left a bar on 98 3rd Avenue, in Manhattan, and as he walked down two buildings down the road from the bar, he was apprehended by defendant Sergeant Lopez, asking the plaintiff "Where is the joint?"
9. As the plaintiff said he know nothing about a joint, defendant Sergeant Lopez started yelling, and then defendant Officer Delamota walked up to the plaintiff, and demanded for a joint as well.
10. Defendant Officer Delamota then sprayed pepper spray into the plaintiff's eyes, hurting the plaintiff.
11. As the plaintiff covered his face, in pain, with both of his hands, both defendants, Sergeant Lopez and Officer Delamota grabbed the plaintiff, pushing and pulling him, and as the plaintiff could no longer see, he held onto the defendants Sergeant Lopez and Officer Delamota, and was thrown to the ground by the officers.
12. Defendants Sergeant Lopez and Officer Delamota then pushed the plaintiff's face into the ground, held him down on the ground, and then handcuffed him.
13. Subsequently, defendants Officer Hofer and Delamota prepared a false report stating that the plaintiff had resisted arrest, and had possessed marijuana.
14. Defendants Officers Hofer and Delamota initiated a prosecution of the plaintiff predicated on this manufactured evidence.
15. Defendants Officers Hofer and Delamota charged and caused the plaintiff to be charged with Resisting Arrest, and Criminal Possession of Marijuana in the 5th degree.

16. The charges against the plaintiff were false, intentional, reckless and in bad faith and the defendants had knowledge of the lack of any legitimate cause or justification for the charges.
17. As a result of the conduct of the defendants, the plaintiff had to attend court on eight or nine different occasions.
18. On January 13, 2014, all of the charges were dismissed.
19. As a direct and proximate result of the conduct of the defendants, the plaintiff had suffered, and continues to suffer mental and emotional distress, injury to health, well-being and feelings.

AS A FIRST CAUSE OF ACTION:

False Arrest

20. Plaintiff hereby restates paragraphs 1-19 of this Complaint, as though fully set forth below.
21. Defendant The City of New York through its agents, and defendants Sergeant Lopez and Officer Delamota violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. Section 1983 by falsely arresting him.

AS A SECOND CAUSE OF ACTION:

Fabrication of Evidence

22. Plaintiff hereby restates paragraphs 1-21 of this Complaint, as though fully set forth below.
23. Defendant The City of New York through its agents, and defendants Officers Delamota and Hofer violated plaintiff's right to a fair trial under 42 U.S.C.A Section 1983 by fabricating evidence that plaintiff had resisted arrest, and had possessed marijuana.

AS A THIRD CAUSE OF ACTION:

Malicious Prosecution

24. Plaintiff hereby restates paragraphs 1-23 of this Complaint, as though fully set forth below.
25. Defendant The City of New York through its agents, and defendants Sergeant Lopez, Officer Delamota and Officer Hofer violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. Section 1983 by maliciously prosecuting him for resisting arrest.

AS A FOURTH CAUSE OF ACTION:
Malicious Prosecution

26. Plaintiff hereby restates paragraphs 1-27 of this Complaint, as though fully set forth below.
27. Defendant The City of New York through its agents, and defendant defendants Sergeant Lopez, Officer Delamota and Officer Hofer violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. section 1983 by maliciously prosecuting him for criminal possession of marijuana in the 5th degree.

AS A FIFTH CAUSE OF ACTION:
Failure to Adequately Train, Supervise, Control and Discipline Against
Defendant The City of New York

28. Plaintiff hereby restates paragraphs 1-27 of this Complaint, as though fully set forth below.
29. Defendant The City of New York violated plaintiff's rights under 42 U.S.C.A. section 1983 by failing to adequately train, supervise, control and discipline defendants Sergeant Lopez, Officer Delamota and Officer Hofer.

AS A SIXTH CAUSE OF ACTION:
Failure to intercede to Prevent an Unlawful Arrest

30. Plaintiff hereby restates paragraphs 1-29 of this Complaint, as though fully set forth below.
31. Defendant The City of New York through its agent violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. section 1983 by the defendant Sergeant Lopez and Officer Delamota's failure to intervene, as each other officer arrested the plaintiff under circumstances indicating clear lack of probable cause.

AS A SEVENTH CAUSE OF ACTION:
Failure to intercede to Prevent an Unlawful Arrest

32. Plaintiff hereby restates paragraphs 1-31 of this Complaint, as though fully set forth below.
33. Defendant The City of New York through its agent violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. section 1983 by the defendant Sergeant Lopez, Officer Delamota and Officer Hofer's failure to intervene, as defendants Officer Delamota and Officer Hofer falsified records, and made false allegations against the plaintiff.

AS A EIGHTH CAUSE OF ACTION:
New York State Malicious Prosecution

34. Plaintiff hereby restates paragraphs 1-33 of this Complaint, as though fully set forth below.
35. Defendant The City of New York through its agents, and defendants Sergeant Lopez, Officer Delamota and Officer Hofer violated plaintiff's rights under the New York State Constitution by maliciously prosecuting him for resisting arrest.

AS A NINTH CAUSE OF ACTION:
New York State Malicious Prosecution

36. Plaintiff hereby restates paragraphs 1-35 of this Complaint, as though fully set forth below.
37. Defendant The City of New York through its agents, and defendants Sergeant Lopez, Officer Delamota and Officer Hofer violated plaintiff's rights under the New York State Constitution by maliciously prosecuting him for criminal possession of marijuana in the 5th degree.

AS A TENTH CAUSE OF ACTION:
Excessive Force

38. Plaintiff hereby restates paragraphs 1-37 of this Complaint, as though fully set forth below.
39. Defendant The City of New York through its agents, and defendants Sergeant Lopez and Officer Delamota violated plaintiff's rights under the Fourth Amendment and 42 U.S.C.A. Section 1983 by using excessive force against him.

WHEREFORE, Plaintiff respectfully requests judgment against the defendants as follows:

- a. Compensatory and punitive damages in an amount to be determined at trial, and reasonable attorneys' fees and costs; and
- b. Such other and further relief as may be just and proper.

Dated: Brooklyn, New York
March 25, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Da'Tekena Barango-Tariah", written over a horizontal line.

Da'Tekena Barango-Tariah, Esq.
25 Bond Street, 2nd Floor
Brooklyn, New York 11201
(718) 625 4200

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JASON J. COOKE,

Case NO.: 15CV02281

Plaintiff,

-against-

COMPLAINT

THE CITY OF NEW YORK, ET AL.,

Defendants.

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Da'Tekena Barango-Tariah, Esq.

Attorney for Plaintiff

25 Bond Street, 2nd Floor

Brooklyn, New York 11201

718 625 4200

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Take Notice that the attached is a true copy of a Judgment duly entered in the office of the clerk of the within named court on _____

STATE OF NEW YORK, COUNTY OF KINGS ss:

I, _____, say, under penalty of perjury, I am not a party to the action, that I reside at Brooklyn, New York, and I am over the age of 18 years of age and on _____, I served a copy of the attached _____ by mailing the same in a sealed envelope, with postage prepaid therein, in a post-office of official depository of the defendants' attorneys at: _____
